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Supreme Court, U.S.
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No. 04-536

IN THE

Supreme Court of the United States

CITY OF NEW ORLEANS, LOUISIANA,

Petitioner,

v.

MUNICIPAL ADMINISTRATIVE SERVICES, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION

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CORPORATE DISCLOSURE STATEMENT PURSUANT TO SUPREME COURT RULE 29.6

Respondent, Municipal Administrative Services, Inc., does not have a parent corporation and there is no publicly held company that owns 10% or more of its stock.

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I

STATEMENT OF THE CASE

In 1995, the City of New Orleans (the "City") hired Municipal Administrative Services, Inc. ("MAS"), a Texas company, to perform auditing and consulting services that the City lacked the expertise to perform. The work performed by MAS involved, *inter alia*, an extensive ten-year audit and analysis of BellSouth's franchise fee payments to the City. The City's contract with MAS obligated the City to pay MAS 20% of "any amounts recovered" from BellSouth. The contract, including the jurisdiction clause at issue here, was drafted by the City.[1] Based upon MAS's audit findings, the City filed a lawsuit against BellSouth, which was ultimately resolved by a settlement agreement that provides for payments to the City that well exceed what BellSouth otherwise would have paid the City absent its assertion of MAS's audit claims.[2]

Once MAS's work was done and the City had profited from it, the City refused to pay MAS's full fee. In December 2001, the City filed suit against MAS seeking a declaratory judgment adjudicating the City's obligation to pay MAS's fee under the contract. MAS timely filed a Notice of Removal on January 15, 2002, removing the matter to federal court

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1. The jurisdiction clause appears in certain contract amendments that the City drafted to extend the duration of the contract. Evidence at trial indicated that the jurisdiction clause was standard language in certain City contracts with outside consultants.

2. The City mischaracterizes the facts regarding its settlement with BellSouth. Pet. at 2 n.1. For instance, the settlement monies were not based on the Simplified Tax Legislation. Rather, BellSouth agreed to pay the City a fixed annual sum of $5,500,000.00 for six years, the same settlement structure proposed by MAS.

based upon diversity jurisdiction. On January 29, 2002, the City filed a motion for remand. Although the City did not contest diversity jurisdiction, it argued that the jurisdiction clause in certain contract amendments amounted to a waiver of MAS's removal right. The district court denied the City's remand motion, finding that the language of the jurisdiction clause did not constitute a waiver of MAS's removal right. Thereafter, MAS filed a counterclaim in which it sought payment of the remainder of its fee, and the case proceeded to trial.

Trial in the district court took place March 17 through 19, 2003. During trial and in its pre-trial and post-trial memoranda, the City asserted a host of theories in which it sought to characterize BellSouth's settlement payments as something other than amounts recovered from BellSouth. Remarkably, the City also argued that payment pursuant to the contingency fee contract that it drafted would violate the Louisiana constitutional prohibition against donations of public funds. On July 15, 2003, the district court entered judgment in favor of MAS and issued a sixty-seven page opinion in which it carefully resolved the myriad factual and legal issues presented. The City then filed an appeal with the Fifth Circuit in which it challenged the denial of its remand motion and the judgment on the merits. The City never argued that the clear and unequivocal waiver standard was inappropriate, nor did the City ever suggest that there was any "split" among circuit courts affecting the waiver of removal rights issue. On July 20, 2004, the Fifth Circuit affirmed the district court's decisions in full. The City did not seek panel re-hearing or *en banc* consideration.

REASONS FOR DENYING THE PETITION

The City seeks this Court's review to obtain a third opinion solely on an issue of contract interpretation that has been resolved against it by the courts below. The City does not challenge the existence of diversity jurisdiction, nor does the City contend that MAS failed to comply with any aspect of the removal statute. The questions presented in the City's petition affect no interests other than those of the City in seeking to set aside the results of trial and re-litigate the entire matter in state court. It would have been a simple matter for the City to have drafted a clause that expressly provided for a waiver of MAS's removal rights. The City failed to do so. MAS respectfully submits that the City's request for certiorari should be denied.

A. The City Waived This Issue and the Lack of Development of This Issue in This Case and Among Other Courts Militates Against a Grant of Certiorari.

The City attempts to create an issue worthy of this Court's review with the contention that there is a conflict among the circuit courts as to whether contractual waiver of removal rights must be clear and unequivocal in diversity cases. Yet, the City never raised this issue in the proceedings below. The City did not even question the propriety of the clear and unequivocal waiver standard in this case until now. To the contrary, the first case cited in the City's memorandum in support of its motion to remand expressly applied the clear and unequivocal waiver test. *City of New Orleans v. Nat'l. Serv. Cleaning Corp.*, No. 96-1601, 1996 WL 419750, at *1 (E.D. La. July 24, 1996). Issues that are not preserved in the lower courts are waived. *Rooker v. Fidelity Trust Co.*, 261 U.S. 114, 117, 43 S. Ct. 288, 289 (1923) (dismissing writ of

error due to failure to timely raise the question presented); *see also Proctor & Gamble Co. v. Amway Corp.*, 376 F.3d 496, 499 n.1 (5th Cir. 2004) ("Failure adequately to brief an issue on appeal constitutes waiver of that argument."). The City's failure to raise this issue below deprived the lower courts of any meaningful opportunity to consider the rationale supporting the standard or whether the use of any other standard would have been preferred or outcome determinative. The record of this case thus lacks the proper development necessary for review by this Court.

The City's failure to challenge the clear and unequivocal waiver test in the lower courts is particularly troubling in this case because the issue has received very little attention by the courts.[3] While the City has identified two circuits that challenge the use of the clear and unequivocal standard in diversity cases, no other circuit has acknowledged any tension among the courts on this issue. Equally significant, no other circuit court has addressed the rationale for using (or rejecting) the clear and unequivocal waiver standard in the diversity context. The paucity of circuit court case law addressing the merits of the clear and unequivocal waiver standard demonstrates that the issue raised by the City lacks both the importance and the development among the circuit courts to merit this Court's review.

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3. *E.g., Autoridad de Energia Electrica de Puerto Rico v Ericsson, Inc.*, 201 F.3d 15, 19 (1st Cir. 2000) ("Because we decide this as a matter of the language of the contract, we do not discuss [the] alternative argument that a waiver of the statutory right of removal must be 'clear and unequivocal.'").

B. The Alleged Circuit Split is More Illusory Than Real.

The City's purported "conflict" is more illusory than real. Notably, the entire discussion of this issue in the first principal case cited by the City is pure *dicta* contained within a footnote in the opinion. *Foster v. Chesapeake Ins. Co.*, 933 F.2d 1207, 1217 n.15 (3d Cir. 1991). Contrary to the City's argument, the decision in *Suter v. Munich Reinsurance Co.*, 223 F.3d 150 (3d Cir. 2000), does not "reaffirm" *Foster*. Rather, the *Suter* court distinguished the facts before it from those in *Foster* and applied the clear and unequivocal waiver standard of which the City complains. *Id.* at 156-59.

Moreover, the purported circuit conflict is merely theoretical. The City itself posits that a "sub-conflict" exists such that circuits applying the clear and unequivocal standard reach the same result as those circuits that purportedly reject the clear and unequivocal standard. Pet. at 14. Thus, by the City's own argument, any disagreement as to whether contractual waiver of removal rights must be clear and unequivocal **has no impact on the resolution of cases**.[4] MAS respectfully submits that this distinction without a difference does not warrant Supreme Court intervention.

Indeed, an examination of the case law demonstrates that circuit courts employ a uniform approach to the treatment of alleged contractual waiver of removal rights irrespective of any theoretical disagreement as to whether such waivers must

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4. Any variations in the resolutions of cases are unremarkable in light of the particularities of the contract terms at issue, whether the party seeking removal drafted the clause at issue, and other factual intricacies inherent in contract cases.

be clear and unequivocal.[5] Courts consistently hold that a contractual clause will be interpreted as a waiver of removal rights if the clause: (1) gives one party the exclusive right to choose venue; or (2) mandates an exclusive venue for dispute resolution. The principal cases cited in the City's petition involved contracts that gave the plaintiff the exclusive right to choose the venue for disputes. *Russell Corp. v. American Home Assur. Co.*, 264 F.3d 1040, 1047 (11th Cir. 2001) (explaining that "the pertinent clause gave the party commencing a lawsuit the sole right to choose the forum for litigation"); *Snapper, Inc. v. Redan*, 171 F.3d 1249, 1262 (11th Cir. 1999) (noting that the clause "provides for the action to be brought in one of the fora 'all as Creditor may elect'"); *Foster*, 933 F.2d at 1216-17 (holding that "by consenting to '*submit*' to '*any court*' of competent jurisdiction '*at the request of the Company,*' and to comply with all requirements necessary to give '*such court*' jurisdiction, Chesapeake agreed to go to, *and stay in*, the forum chosen by Mutual Fire").[6]

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5. As set forth in footnote 10 of the district court's ruling on the remand motion, the lower courts' interpretation of the jurisdiction clause is well-aligned with interpretations by numerous other federal courts.

6. The decisions in *Russell* and *Foster*, both of which involved service of suit clauses commonly used in reinsurance contracts, were also influenced by a long line of cases interpreting such clauses with essentially identical language. *Russell*, 264 F.3d at 1047; *Foster*, 933 F.2d at 1217. Foreign reinsurers have typically included service of suit clauses in their contracts as a marketing device to attract business in North America. Barry R. Ostrager and Mary Kay Vsykocil, *Modern Reinsurance Law and Practice*, § 13.01 (2d ed. 2000). Policy considerations relevant to the construction of reinsurers' rights under contracts drafted by reinsurers are, of course, irrelevant to this case.

Absent a clause that gives one party the exclusive right to choose the venue, courts consistently recognize a critical distinction between consent to jurisdiction and the designation of an exclusive venue. As explained by the Seventh Circuit:

> The **law is clear**: where venue is specified with mandatory or obligatory language, the clause will be enforced; where only jurisdiction is specified, the clause will generally not be enforced [as a mandatory forum selection clause] unless there is some further language indicating the parties' intent to make venue exclusive.

Paper Express, Ltd. v. Pfankuch Maschinen GmbH, 972 F.2d 753, 757 (7th Cir. 1992) (emphasis added); *see also K&V Scientific Co. v. Bayerische Motoren Werke Aktiengesellschaft*, 314 F.3d 494, 499 (10th Cir. 2002) (quoting same as stating the general rule followed by circuit courts); *John Boutari & Son, Wines & Spirits, S.A. v. Attiki Imps. & Distribs. Inc.*, 22 F.3d 51, 52 (2d Cir. 1994) (same); *Docksider, Ltd. v. Sea Tech., Ltd.*, 875 F.2d 762, 764 (9th Cir. 1989) (same). The jurisdiction clause at issue here neither gave the City the exclusive right to choose the venue nor specified venue with mandatory or obligatory language, but merely indicated that MAS "consented" to jurisdiction and waived its jurisdiction defenses.

Circuit courts further agree that a contractual clause (like the clause at issue here) in which a party only consents to the jurisdiction of a particular court does not constitute a waiver of removal rights. Significantly, the distinction between submitting to the jurisdiction of a particular court and waiving one's removal rights is equally applicable in

circuits that do not apply the clear and unequivocal waiver standard. The Eleventh Circuit's decision in *Global Satellite Communication Co. v. Starmill U.K. Ltd.*, 378 F.3d 1269 (11th Cir. 2004), which was rendered after its decisions in *Snapper* and *Russell*, is illustrative. The contract at issue provided:

> The parties to this agreement herein expressly waive the right to contest any issues regarding venue or in personam jurisdiction and agree in the event of litigation to submit to the jurisdiction of Broward County, Florida.

Id. at 1273. Using ordinary principles of contract interpretation, the Eleventh Circuit held that the defendant had not waived its removal right, explaining:

> The phrase is simply ambiguous, it lends itself to several possible reasonable interpretations, and rather than strain to find that one should prevail over another, we must simply construe it against Global Satellite, the drafter. If Global Satellite intended to permit suit only in the state courts of Florida located in Broward County, as it claims, it could easily have stated that intention precisely.

Id. at 1274 (internal citation omitted).

The Ninth Circuit's decision in *Hunt Wesson Foods, Inc. v. Supreme Oil Co.*, 817 F.2d 75 (9th Cir. 1987), is also illustrative. In *Hunt Wesson*, the contract clause at issue stated: "The courts of California, County of Orange, shall have jurisdiction over the parties in any action at law relating to the subject matter or the interpretation of this contract."

Id. at 76. Applying ordinary rules of contract interpretation, the Ninth Circuit held that the clause did not waive the defendant's removal rights. The court explained:

> Here, the plain meaning of the language is that the Orange County courts shall have jurisdiction over this action. The language says nothing about the Orange County courts having exclusive jurisdiction. The effect of the language is merely that the parties consent to the jurisdiction of the Orange County courts. Although the word "shall" is a mandatory term, here it mandates nothing more than that the Orange County courts have jurisdiction. Thus, [defendant] cannot object to litigation in the Orange County Superior Court on the ground that the court lacks personal jurisdiction. **Such consent to jurisdiction, however, does not mean that the same subject matter cannot be litigated in any other court.**

Id. at 77 (emphasis added). Likewise, in *Autoridad de Energia Electrica de Puerto Rico v. Ericsson Inc.*, 201 F.3d 15, 18-19 (1st Cir. 2000), the First Circuit, applying ordinary rules of contract interpretation and without deciding whether waiver of removal rights must be clear and unequivocal, held that removal was not waived by a contract clause stating that the parties agreed "to submit to the jurisdiction of the courts of the Commonwealth of Puerto Rico." The First Circuit explained: "A clause that simply consents to jurisdiction in one court does not by its terms exclude jurisdiction in another court." *Id.* at 16.

As set forth above, the City's contention that a writ of certiorari is warranted to provide "a uniform standard by

which to evaluate such clauses" is wholly unfounded. Pet. at 13. Guidance for contracting parties is sufficiently provided in existing case law, and review by this Court is not warranted. Furthermore, parties who are truly interested in obtaining a waiver of removal rights can avoid uncertainty by stating their intent precisely. MAS respectfully submits that this Court need not grant certiorari review in order to assist parties, like the City, who engage in inarticulate draftsmanship. As the Sixth Circuit has held in a similar context:

> It is easy enough to provide that, if a state court is selected as a forum, no right of removal attaches. **There is no reason why courts should have to wrestle with these interpretative questions when the contracting parties can easily deal with the problem themselves.**

In re Delta America Re Ins. Co., 900 F.2d 890, 894 (6th Cir. 1990) (emphasis added); *see also Archdiocese of Milwaukee v. Underwriters at Lloyds, London*, 955 F. Supp. 1066, 1069 (E.D. Wis. 1997) (noting that the "court and the public have no interest in what the defendants do with their right to remove").

C. The Resolution of Any Theoretical Conflict is Irrelevant to the Outcome of This Case Under Louisiana Contract Law.

While the City complains that the Fifth Circuit improperly applies "heightened scrutiny" to contracts that purportedly waive removal rights, ordinary principles of Louisiana contract law require heightened scrutiny as well. Louisiana law is clear: "an agreement which waives or alters

statutorily established rights must be 'clear and unambiguous.'" *Jones v. GM Corp.*, 871 So. 2d 1109, 1118 (La. 2004); *see also In re Jack/Wade Drilling, Inc.*, 213 B.R. 493, 500 (Bankr. W.D. La. 1997) ("Under Louisiana law, waiver of statutory rights must be express and explicit.").[7] Since the standard for interpreting contractual waiver of removal rights under Louisiana contract law is essentially the same standard employed by the lower courts in this case, the City has no basis for contending that the application of "ordinary rules" of contract interpretation would have produced a different result.

Moreover, the jurisdiction clause fails to effect a waiver of MAS's removal rights irrespective of whether such waiver must be "clear and unequivocal" or "clear and unambiguous." Under Louisiana's Civil Code, words in a contract "must be given their generally prevailing meaning," La. Civ. Code art. 2047, and any doubt as to the meaning of contract terms must be construed against the drafting party. La. Civ. Code art. 2056. The application of these principles produces the same construction of the jurisdiction clause as that reached by the lower courts.[8]

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7. This unique principle of Louisiana law appears to distinguish this case from the common law jurisdictions upon which the City relies.

8. The City's suggestion that a state court should have decided this case based upon "state interests" is without merit. Pet. at 9 n.5. The presence of state law issues in litigation between contracting parties cannot affect the interpretation of a contract executed prior to such litigation. The City has never suggested that the federal district court should have abstained from exercising its jurisdiction or remanded on this basis. The City also mischaracterizes the facts. The parties' contract did not require the City to pay MAS an hourly fee, and the Constitutional article at issue precludes donations of state funds, not bonuses. La. Const. art. VII, § 14(A).

The clause, which appears under the heading "JURISDICTION," refers only to jurisdiction without any designation of an exclusive or mandatory venue. "Jurisdiction" refers to the court's power to decide a case or issue a decree. Black's Law Dictionary 855 (7th ed. 1999). In contrast, "venue" refers to "the proper place for the trial of a lawsuit." Black's Law Dictionary 1553 (7th ed. 1999). In accordance with Louisiana Civil Code article 2047, the lower courts attributed the "generally prevailing meaning" to the words of the jurisdiction clause and correctly interpreted "jurisdiction" to mean jurisdiction, nothing more or less.[9] Additionally, the principle requiring construction of ambiguity against the drafting party (the City) supports the conclusion that the jurisdiction clause cannot be interpreted as a waiver of MAS's removal rights.

The City fails to cite a single rule of Louisiana contract law that compels reversal of the interpretation reached below. Instead, the City suggests the adoption of a principle that is completely foreign to Louisiana contract law – that the clause should be interpreted in favor of the party whom it was intended to benefit. Pet. at 15. This "principle" squarely contravenes Louisiana law. *E.g., Dohoney v. La. Casino Cruises, Inc.*, 671 So. 2d 537, 540 (La. App. 1st Cir. 1996) ("Any ambiguity in the agreement must be interpreted against the party who prepared the contract.") (citing *Kenner Industries, Inc. v. Sewell Plastics, Inc.*, 451 So. 2d 557, 560 (La. 1984); *Bond v. Allemand*, 632 So. 2d 326, 329 (La. App. 1st Cir. 1993)).

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9. The lower courts interpreted "jurisdiction" to refer to personal jurisdiction since contracting parties cannot agree to vest or divest a court of subject matter jurisdiction. La. Code Civ. Proc. art. 3.

Nor does the City cite any principle of contract interpretation to support its contention that a "waiver of any pleas of jurisdiction" amounts to a waiver of removal rights. The "waiver of any pleas of jurisdiction" is reasonably construed as a waiver of personal jurisdiction defenses. If the City had intended to obtain a waiver of MAS's venue objections, the City, as the drafting party, should have so stated. Indeed, other City contracts have such express provisions. In *City of New Orleans v. Nat'l Serv. Cleaning Corp.*, No. 96-1601, 1996 WL 419750, at *1 (E.D. La. July 24, 1996), the court granted the City's remand motion based upon its contract with the defendant, which expressly stated that the contractor "consents to and **stipulates to** the personal jurisdiction **and venue** of the Civil District Court for the Parish of Orleans, Louisiana in any litigation brought under this Article." (emphasis added). After the decision in *National Service Cleaning*, the City was on notice that contract language stipulating to venue would be required to obtain waiver of removal rights.

The City further contends that the lower courts' interpretation renders the jurisdiction clause "superfluous" since "MAS had numerous contacts with Louisiana" for purposes of personal jurisdiction. Pet. at 21. Again, this contention is easily dealt with irrespective of any application of the clear and unequivocal waiver standard. Simply put, the lower courts' interpretation does not render the jurisdiction clause "superfluous." Rather, their interpretation recognizes the City's interest in obtaining MAS's express consent to personal jurisdiction to avoid the burden of litigating whether MAS, a Texas corporation, would be subject to personal jurisdiction in Louisiana. *See Dickson Marine Inc. v. Panalpina, Inc.*, 179 F.3d 331, 337 (5th Cir. 1999) ("the existence of a contractual relationship, although

relevant, does not automatically establish sufficient minimum contacts"); *Holt Oil & Gas Corp. v. Harvey*, 801 F.2d 773, 778 (5th Cir. 1986) ("merely contracting with a resident of the forum state is insufficient to subject the nonresident to the forum's jurisdiction").[10] The City's argument was soundly refuted in *Autoridad de Energia Electrica de Puerto Rico v. Ericsson, Inc.*, 201 F.3d 15, 19 (1st Cir. 2000). Like the City, the plaintiff in *Ericsson* argued that a jurisdiction clause would be rendered ineffective if not construed to designate exclusive venue since the defendant was clearly subject to personal jurisdiction. Rejecting this argument, the First Circuit explained that the plaintiff "had an obvious interest in cutting off any possible litigation on personal jurisdiction grounds, even if the issue was unlikely to be raised." *Id.*

In sum, the Fifth Circuit's interpretation of the jurisdiction clause is not only consistent with the approach taken by other federal courts (discussed above at pages 6-9), but is fully supported by Louisiana rules of contract interpretation, including, *inter alia*, the principle that contractual waiver of statutory rights must be clear and unambiguous. As a result, review by this Court is not warranted.

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10. In a similar vein, contracting parties often include a choice of law provision to avoid litigation disputes over the applicable law. Indeed, the City's contract with MAS contained several clauses that could be characterized as "superfluous" under the facts of this case, but which are in the nature of dispute avoidance. For example, the contract contained a "waiver of sick and annual leave benefits" clause despite the obvious fact that MAS was not a City employee and never had any entitlement to sick or annual leave benefits.

D. The Unique Procedural Posture of This Case Militates Against a Grant of Certiorari.

Unlike the procedural posture of every other circuit court case cited in the City's petition, this case has been fully litigated, tried, and resolved by a final judgment.[11] The large number and complexity of the factual and legal issues resolved below are reflected in the sixty-seven (67) page opinion issued by the district court. In striking contrast to the procedural posture of this case, the City relies on cases involving direct appeals of remand orders.[12] No decision of this Court, no requirement of any statute, and no principle of sound judicial administration requires setting aside the results of the trial and giving the City a second chance in state court. As this Court has opined:

> Once a diversity case has been tried in federal court, with rules of decision supplied by state law under the regime of *Erie R. Co. v. Tompkins*, 304 U.S. 64, 58 S. Ct. 817, 82 L. Ed. 1188 (1938), considerations of finality, efficiency, and economy become overwhelming.

Caterpillar Inc. v. Lewis, 519 U.S. 61, 75, 117 S. Ct. 467, 476 (1996).

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11. With the exception of one case, every circuit court case cited by the City was a direct appeal of a remand order. The sole exception, *In re Texas Eastern Transmission Corp. PCB Contamination Ins. Coverage Litig.*, 15 F.3d 1230 (3d Cir. 1994), was an appeal after the case was resolved by summary judgment, in which the Third Circuit affirmed the district court's refusal to remand.

12. Circuit courts agree that remand orders based upon contractual waiver of removal rights are subject to direct appeal. *E.g., Suter v. Munich Reinsurance Co.*, 223 F.3d 150, 152 (3d Cir. 2000) (explaining rationale).

The petitioner in *Caterpillar* had removed the case in violation of the removal statute because complete diversity was lacking. The district court, however, denied remand and the case proceeded to trial. Although the defect in diversity was cured at the time of judgment, the Sixth Circuit vacated the judgment on grounds that the removal was improper. The issue considered by this Court was whether "the absence of complete diversity at the time of removal is fatal to federal-court adjudication." 519 U.S. at 64, 117 S. Ct. at 471. Describing the improper removal as an error that "remained in the unerasable history of the case," 519 U.S. at 73, 117 S. Ct. at 475, the Court nonetheless held that the improper removal was not fatal to the ensuing adjudication of the case. The Court explained:

> To wipe out the adjudication postjudgment, and return to state court a case now satisfying all federal jurisdictional requirements, would impose an exorbitant cost on our dual court system, a cost incompatible with the fair and unprotracted administration of justice.

519 U.S. at 77, 117 S. Ct. at 477.

Here, as in *Caterpillar*, granting review in order to return this fully adjudicated case to state court would impose an exorbitant cost on both the judicial system and the parties, which is plainly incompatible with the fair and unprotracted administration of justice. Returning this case to state court for a new trial would be particularly unjust since the existence of diversity jurisdiction and full compliance with the removal statute are not and have never been in dispute. Moreover, the City does not claim that it received an unfair trial nor does it claim that any rules of evidence or procedure peculiar

to state court would have had any impact on the resolution of this matter. If, as the City suggests, this is such an important issue impacting contracting parties, then the Court will have the opportunity to provide such guidance in a case that has not been fully adjudicated. In contrast, considerations of finality, efficiency and economy overwhelmingly support the denial of review in this case.

CONCLUSION

For the reasons stated above, MAS submits that the attention of this Court is not merited and that the City's petition should be denied in full.

Respectfully submitted,

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